THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION No.694 of 2006

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Dated:18.03.2006

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Between:

Sri Venkateswara Swamy Temple Committee.

…Petitioner

And

The Municipal Commissioner, Samalkot Municipality, Samalkot, East Godavari District, and another.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION No.694 of 2006

ORDER:

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Sri Venkateshwara Swamy Temple Committee filed the present writ petition seeking a writ of mandamus declaring the action of the first respondent in not removing the wooden bunks/baddies erected by encroaching the public drain and main road in

front of Sri Venkateshwara Seamy Temple, Samalkota, as illegal and arbitrary.

It is the case of the petitioner that Sri Venkateshwara Swamy Temple is an old Temple, which is visited by large number of people. So as to allow the devotees to visit the Temple without any difficulty, the petitioner-Committee came into existence about two decades ago and it is continuing regular poojas. The second respondent erected three wooden bunks. The neighbour, one Srinivasa Rao, made an attempt to remove the shops. The second respondent then filed a suit, being O.S.No.208 of 1998, on the file of the Court of the Principal Junior Civil Judge, Kakinada, for permanent injunction. Two persons filed O.S.No.718 of 1998 on the file of the same Court. Both the suits were clubbed. By a common order, dated 16.11.2004, the suit filed by the second respondent was dismissed, and the suit filed by other two persons i.e., N.Srinivasa Rao and N.Subba Rao, was decreed directing the second respondent to remove the shops. It is alleged that on 14.12.2005, the first respondent removed the shop, acting as per the directions of the civil Court. However, the second respondent again tried to erect the bunks. This was brought to the notice of the first respondent, in vain. Hence the present writ petition.

Though the writ petition was admitted by this Court on 10.01.2006, and the first respondent entered appearance, no counter affidavit is filed. Notice is duly served on the second respondent, who appeared through his Counsel. When the matter was called yesterday, the learned Counsel for the second respondent is absent. Today also, there is no appearance for the second respondent and the learned Counsel for the second respondent is absent.

Learned Standing Counsel for Samalkota Municipality submits that the bunk erected by the second respondent on the drainage canal was already removed. But, the second respondent re-erected the bunk/ baddie after few days adjacent to the petitioner's compound wall by encroaching municipal drain. On instructions, he submits that the Municipality shall take necessary action immediately in due course of time.

As the first respondent has not denied its duty to keep the drain free of all encumbrances and encroachments, this Writ Petition is disposed of directing the first respondent to remove the bunk/baddie erected by the second respondent on municipal drain, immediately, within a period of one week from the date of receipt of a copy of this order. The Municipality shall also ensure that nobody shall erect any bunk on the municipal drains. No costs.

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(V.V.S.RAO, J)

18.03.2006

vs